

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GARY A. BAILEY)	
Claimant)	
VS.)	
)	Docket No. 248,868
HALLMARK CARDS, INC.)	
Respondent)	
AND)	
)	
ROYAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appealed Administrative Law Judge Brad E. Avery's January 27, 2000, preliminary hearing Order for Medical Treatment.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment with orthopedic surgeon C. Craig Satterlee, M.D., of Kansas City, Missouri, for work-related injuries to claimant's shoulders and upper extremities. The Administrative Law Judge found claimant proved his repetitive work activities while employed by the respondent either caused new injuries to his shoulders and upper extremities or aggravated pre-existing injuries requiring medical treatment. The Administrative Law Judge further found those injuries were not settled in a workers compensation settlement hearing held on August 18, 1999. Additionally, the Administrative Law Judge found claimant had provided respondent with timely notice of accident and had served upon respondent a timely written claim for compensation.

On appeal, respondent contends the alleged shoulder and upper extremities injuries for which claimant is requesting medical treatment were all settled in the August 18, 1999, settlement hearing. Furthermore, if these alleged work-related injuries were not settled at that time, the respondent argues the claimant failed to prove the injuries arose out of and in the course of the employment with respondent, the claimant failed to prove he provided respondent with timely notice of accident, and the claimant failed to serve a timely written claim for compensation on respondent for the injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments of parties contained in their briefs, the Appeals Board finds the Administrative Law Judge's preliminary hearing Order for Medical Treatment should be affirmed.

Claimant injured his right elbow at work on or about January 29, 1998. Respondent provided claimant with medical treatment for this right elbow injury with Craig L. Vosburgh, M.D. On February 12, 1999, Dr. Vosburgh performed a tennis elbow release. After post-surgery treatment, Dr. Vosburgh released claimant from medical care to regular duty on May 19, 1999.

At the request of respondent's insurance carrier and in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, the doctor found claimant had sustained a 6 percent permanent functional impairment of the right upper extremity and converted that rating to a 4 percent whole person permanent functional impairment.

On August 18, 1999, before Special Administrative Law Judge Clyde N. Christey, the claimant and respondent settled claimant's right elbow claim for a lump sum amount of \$5,610.80 based on Dr. Vosburgh's 4 percent whole person functional impairment rating. Respondent and its insurance carrier were represented at the settlement hearing by their attorney, and the claimant appeared pro se.

The Appeals Board finds that claimant's testimony, the correspondence admitted into the preliminary hearing record, and the transcript of the August 18, 1999, settlement hearing are clear that the only claim that was settled in the August 18, 1999, settlement hearing was a claim for the January 29, 1998, right elbow injury. There was absolutely no compensation paid at that time for any other injury other than the January 29, 1998, right elbow injury.

In June or July of 1998, Dr. Vosburgh operated on one of claimant's shoulders, and in November of 1998, he operated on the other shoulder. After both of the operations, claimant testified he was on light duty and, in fact, was on light duty for the entire year of 1998 because of his bilateral shoulder problems. Although claimant thought his bilateral shoulder problems were related to his work activities, respondent did not. The shoulder surgeries and post-surgery medical care were provided through the respondent's private insurance carrier. Claimant did not file a workers compensation claim for his shoulder problems.

But claimant testified, at the preliminary hearing, that after the shoulder surgeries his repetitive work activities, which he was required to perform each and every workday, had again made his shoulders symptomatic. Respondent, however, contends if claimant has sustained injuries to his shoulders at work then those injuries occurred in 1998 and are barred because claimant failed to serve respondent with a timely written claim for compensation at that time.

In regard to the alleged upper extremities injuries, respondent argues there is no medical evidence to prove that claimant's work activities caused the injuries. Furthermore, respondent asserts claimant has failed to prove he provided respondent with timely notice of accident, and also has failed to file a written claim for compensation in respect to the alleged upper extremities injuries.

The Appeals Board finds the respondent nurse's notes, that were admitted into evidence at the preliminary hearing, show that, after both of claimant's shoulder surgeries in 1998 and his right elbow surgery in 1999, he made complaints to the nurse either during his shift or after his shift concerning discomfort he was having in both his shoulders and upper extremities. Additionally, claimant established through his testimony that after his February 12, 1999, right elbow surgery and his release to regular work on May 19, 1999, the repetitive work activities he was required to perform caused further pain and discomfort in his shoulders and upper extremities. Claimant, on November 3, 1999, filed an Application for Hearing that was assigned this docket number alleging repetitive injuries to his shoulders and upper extremities.

The Appeals Board finds that claimant, through his testimony along with the respondent nurse's records, proved claimant has suffered either new injuries or aggravated pre-existing conditions of both his shoulders and upper extremities while performing repetitive work activities up through October 1, 1999, which is the date claimant was placed on light duty because of a specific left shoulder injury which is the subject of the preliminary hearing Order for Medical Treatment in Docket No. 248,869. The respondent nurse's records show claimant provided respondent with notice of continuing injuries to his shoulders and upper extremities, and claimant filed a timely written claim for these injuries when he filed the Application for Hearing with the Workers Compensation Division on November 3, 1999.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Medical Treatment dated January 27, 2000, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Gregory D. Worth, Lenexa, KS
Brad E. Avery, Administrative Law Judge

GARY A. BAILEY

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DOCKET NO. 248,868

Philip S. Harness, Director